

Selling and Sampling Alcoholic Beverages at Farmers Markets and Fairs

A Guide for New York State Farmers

Note: This article is part one of a two part series. The second installment, A Guide for New York State Markets, will be published on our website in 2 to 4 weeks. This guide is for information purposes only as it is your responsibility to follow all local, municipal and state regulations.

There have been many recent changes to the laws when it comes to selling and sampling alcoholic beverages at farmers markets, leaving many of us confused about what is allowed. The good news is that the changes all move in the direction of allowing more sales for farm wineries, microbreweries, and local distilleries at both farmers markets and farm stands. As the “eat local” movement grows, the governor and legislatures have recognized the public’s desire for all things to be grown and produced as close to home as possible, and that includes beer, wine, and liquor.

The first thing a local alcohol producer needs to do if they are interested in selling their product in New York State is to go to the State Liquor Authority (SLA) Website at <http://www.sla.ny.gov>.¹ Click on “Online Permit Applications” on the left-hand side to apply for a license. You cannot sell alcohol in New York State without paying an annual licensing fee based upon the amount of product being produced. The license allows you to sell beer, wine, cider, or distilled products at wholesale and retail (which in many cases includes farmers markets and fairs) and also to do tastings by purchasing an additional marketing permit. The license does not allow you to sell alcohol by the glass, however, you can apply for a Temporary/Special Events Permit which will allow you to sell by the glass up to four times per year per location for \$36.

There is also a requirement to register your brand label. To complete this step you will need to visit <http://www.sla.gov/brand-labeling-1> and follow the requirements outlined in each section below.²

Wineries:

The annual license fee is normally \$625 for a winery, but it’s lowered if you are considered a Farm Winery (\$125) or a Micro Winery (\$50). In order to be considered a Farm or Micro Winery your wine must be made at least 75% from grapes, fruits, or other agricultural products grown in New York State. Farm Wineries are defined as producing 150,000 gallons or less annually whereas Micro Wineries must produce less than 1,500 gallons per year. Farm wineries are exempt from tax filing requirements to report sales made to bars, restaurants, and other retailers. There is also a special law stating that wine vendors are allowed to sell by the glass at the NY State Fair without a license provided the wine is consumed on the premises, is less than 10 oz. per glass, and that they are an authorized vendor of the fair. Wine vendors must meet brand label registration requirements as follows: If you are selling wine products, wine specialties and/or wines containing 7% alcohol or less, you will need to pay a \$50 fee per product and submit an application with an image of your label(s) to the SLA for approval. For wines over 7% alcohol there is no fee, but you are still required to submit an appointment letter and federal certificate of label approval (COLA).³

Breweries:

The annual license fee of \$4000 for a brewery is reduced significantly to only \$320 if you are a Farm Brewery or Micro-Brewery. Farm Breweries and Micro-Breweries are both defined as producing less

than 60,000 barrels per year. Farm Breweries are limited to selling only NYS labeled beer, but they are also allowed to sell and sample NYS Labeled cider with a Marketing Permit, while Micro-Breweries are not. In order to be considered a farm brewery, at least 20% of the hops and 20% of all other ingredients used must be grown or produced in NYS until the end of 2017. On Jan 1, 2018 to December 31, 2028 this requirement will change to 60% of your hops and 60% of your other ingredients and after Jan 1, 2024 the requirement will change to 90% hops and 90% other ingredients. All breweries producing 60 million or fewer gallons are eligible for a 14 cents per gallon refundable tax credit for the first 500,000 gallons produced and 4.5 cents per gallon for the next 15 million gallons produced in NYS. Farm breweries are exempt from tax filing requirements to report sales made to bars, restaurants, and other retailers. Beer products also require a COLA and state brand label registration with a \$150 fee per product, but breweries making 1,500 barrels or less are exempt from the fee.

Cider Producers:

There are two types of cider licenses in NYS: Cider Producer (\$125) and Farm Cidery (\$75). The Farm Cidery is limited to 150,000 gallons per year and products must be NYS labeled. NYS labeled cider must be made exclusively from apples or other pome fruits (i.e. pears, quinces) grown in New York State. Cider is defined as partially or fully fermented juice of fresh, whole apples or other pome fruits, 3.2 – 8.5 % alcohol with nothing added that increases alcoholic content produced by natural fermentation, but it may be sweetened or flavored after fermentation. When it comes to cider labeling, effective 1/1/2014 you have three options if your cider also meets the definition of a wine (75% or more from grapes OR fruit grown in New York State): 1. submit the Cider Brand Label registration form. Label must state “cider.” At this time there is no fee for registering a cider label, but you must include a copy of a lab analysis from a TTB-certified lab showing the alcohol content of the product (for alcohol contents between 3.2% and 6.9%), or a copy of the certificate of label approval (COLA) from TTB³ (for alcohol contents between 7.0 and 8.5%). 2. If your product does not exceed 6.9% alcohol by volume, you can register as a low alcohol wine instead. Label must state “wine” preceded by the type of fruit used - for example, “apple wine.” 3. If your product is 6.9% to 8.5% alcohol and you do not want to register as a cider, you can consider your product as a high-alcohol wine for which registration is not required. You’re still required to have a COLA from TTB.

Distilleries:

Distilleries are classified as either Distiller (\$12,000) or Farm Distiller (\$128). Farm distillers are limited to 35,000 gallons per year and must sell liquor is made using at least 75% New York State ingredients. Farm distilleries are exempt from tax filing requirements to report sales made to bars, restaurants, and other retailers. Distilled products also require COLA and SLA brand label registration and a \$250 fee per product.

Tastings

For any of the above classifications of alcohol producers, Marketing Permits must be purchased separately to do tastings. Marketing Permits are \$395 for 3 years or \$25 for a single use. The following rules apply when it comes to tastings for Farm Wineries, Farm/Micro Breweries, Farm Cideries and Farm Distilleries:

Tastings at farmers markets, county fairs, and The NY State Fair are allowed if the products are NYS labeled and

- No fee is charged by the supplier to the consumer.
- Beer, wine products and cider samples are 3 oz. or less, wine samples are 2 oz. or less, and distilled samples are ¼ oz. or less.
- Liquor and wine used for tastings do not have to be price posted items, while liquor and wine used for sales by the bottle must be price posted.

Tastings to another event/location are allowed with a Marketing Permit on notice to the SLA. To notify the SLA, simply email Licensing.Information@sla.ny.gov at least 15 days prior to the event - if you do not hear back from the SLA within that time frame then your event is approved. The SLA reserves the right to disapprove the use of a permit at a particular function for a good cause.

Farm Stands

There is a new law that goes into effect March 26th, 2014 regarding selling wine at farm stands. Farm stands will now be allowed to sell bottled wines from up to 2 wineries that are within 20 miles of that farm stand. One important caveat is that farm stands who are currently selling beer under existing laws cannot take advantage of the new law unless they stop selling beer; a farmstand can either sell wine OR beer. Tastings are not allowed at farm stands.

For More Information

¹ State Liquor Authority: <http://www.sla.gov> or (518) 453 – 8130 – Monday to Friday 8:30 am to 8:30 PM

² Brand Label Registration: Brand.Label@sla.ny.gov or (518) 474 – 3114 then 1 for licensing matters and 3 for licensing assistance and ask to be transferred to brand label registration.

³ Alcohol and Tobacco Tax and Trade Bureau (TTB): <https://www.ttbonline.gov>.

⁴ Empire State Development: nys-capitaldist@esd.ny.gov.